

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554

FCC MAIL SECTION  
DA 95-1904

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Amendments of Part 69  
of the Commission's Rules  
Relating to the Creation of  
Access Charge Subelements for  
Open Network Architecture

CC Docket No. 89-199 DISPATCHED BY

Application of Open Network  
Architecture and Nondiscrimination  
Safeguards to GTE Corporation

CC Docket No. 92-256 /

**MEMORANDUM OPINION AND ORDER**

Adopted: August 31, 1995

Released: August 31, 1995

By the Chief, Common Carrier Bureau:

**I. INTRODUCTION**

1. On July 7, 1995, GTE filed a waiver request of the Open Network Architecture (ONA) state and federal tariffing requirement for four ONA services.<sup>1</sup> GTE requests a waiver of the federal tariffing requirement for three Basic Service Elements (BSEs): Direct Inward Dialing (DID); Billed Number Screening (BNS); and Contollink Digital Channel Service (CLDCS). GTE also requests a waiver to remove from its ONA plan, and thus not tariff, a Basic Service Arrangement (BSA), Alarm Signal Transport Service (ASTS).

2. We deny GTE's petition because GTE did not provide sufficient justification for a waiver of the ONA tariffing requirements for those four ONA services. GTE must file federal tariffs for these services by August 31, 1995, and state tariffs 30 days after the effective date of the federal tariffs, as required

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<sup>1</sup> Under the ONA model, BSAs are the fundamental tariffed switching and transport services that permit enhanced service providers (ESPs) to communicate to their customers through the exchange carrier's network. BSEs are optional unbundled features that an ESP may require or find useful in configuring its enhanced service.

in the GTE ONA Plan Order and GTE Waiver Order.<sup>2</sup>

## II. BACKGROUND

3. In the Computer III and ONA proceedings, the Commission established a comprehensive regulatory framework of nonstructural safeguards, including ONA requirements and nondiscrimination safeguards, to govern the BOCs' participation in the enhanced services marketplace.<sup>3</sup> In order to provide network-based opportunities for competing enhanced service providers (ESPs), the Commission required the BOCs to establish and maintain Comparably Efficient Interconnection (CEI) and ONA plans to govern their provision of enhanced services on an integrated basis. On April 4, 1994, in the GTE ONA Order, the Commission applied these

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<sup>2</sup> Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation, CC Docket No. 92-256, DA 95-718 (Com. Car. Bur. released April 3, 1995) (GTE Waiver Order); DA 95-1468 (Com. Car. Bur. released July 29, 1995) (GTE ONA Plan Order).

<sup>3</sup> Amendment of Section 64.702 of the Commission's Rules and Regulations, Phase I, 104 FCC 2d 958 (1986) (Phase I Order), recon., 2 FCC Rcd 3035 (1987) (Phase I Recon. Order), further recon., 3 FCC Rcd 1135 (1988) (Phase I Further Recon. Order), second further recon., 4 FCC Rcd 5927 (1989) (Phase I Second Further Recon. Order), Phase I Order and Phase I Recon. Order vacated, California v. FCC, 905 F.2d 1217 (9th Cir. 1990); Phase II, 2 FCC Rcd 3072 (1987) (Phase II Order), recon., 3 FCC Rcd 1150 (1988) (Phase II Recon. Order), further recon., 4 FCC Rcd 5927 (1988) (Phase II Further Recon. Order), Phase II Order vacated, California v. FCC, 905 F.2d 1217 (9th Cir. 1990); Computer III Remand Proceedings, 5 FCC Rcd 7719 (1990) (ONA Remand Order), recon., 7 FCC Rcd 909 (1992), pets. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993); Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571 (1991) (BOC Safeguards Order), vacated in part and remanded, California v. FCC, 39 F.3d 919 (1994) (California III); Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1 (1988) (BOC ONA Order), recon., 5 FCC Rcd 3084 (1990) (BOC ONA Recon. Order), Filing and Review of Open Network Architecture Plans, 5 FCC Rcd 3103 (1990) (BOC ONA Amendment Order), Erratum, 5 FCC Rcd 4045, aff'd sub nom. California v. FCC, 4 F.3d 1505 (9th Cir. 1993), recon., 8 FCC Rcd 97 (1993) (BOC ONA Amendment Recon. Order); Filing and Review of Open Network Architecture Plans, 6 FCC Rcd 7646 (1991) (BOC ONA Further Amendment Order); Filing and Review of Open Network Architecture Plans, 8 FCC Rcd 2606 (1993) (BOC Second Further Amendment Order), aff'd sub nom. California v. FCC, 4 F.3d 1505 (9th Cir. 1993).

same requirements to GTE. The Commission found that application of ONA requirements to GTE would further the public interest goal of fostering a fully and fairly competitive environment for the provision of enhanced services.<sup>4</sup>

4. The GTE ONA Order required GTE to file an ONA Plan on January 4, 1995,<sup>5</sup> and to implement its ONA requirements and nondiscrimination safeguards by July 4, 1995.<sup>6</sup> In the GTE Waiver Order, the Bureau concluded that GTE need not offer new ONA services until after the state and federal tariffs for the services

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<sup>4</sup> Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation, 9 FCC Rcd 4922 (1994) (GTE ONA Order). The Commission required GTE to comply with all ONA requirements imposed on the BOCs, with certain exceptions. Id. at 4937, para. 25 n.70.

<sup>5</sup> Application of Open Architecture and Nondiscrimination Safeguards to GTE Corporation, CC Docket No. 92-256, GTE's Open Network Architecture Plan, filed by GTE on January 4, 1995 (GTE January 4, 1995 Filing); letter and attachment from Edwin Shimizu, Director, Regulatory Matters, GTE, to William F. Caton, Acting Secretary, FCC, filed March 6, 1995 (GTE March 6, 1995 Ex Parte Filing); letter and attachment from F. Gordon Maxson, Director, Regulatory Affairs, GTE, to William F. Caton, filed March 13, 1995 (GTE March 13, 1995 Ex Parte Filing); letter and attachment from F. Gordon Maxson to William F. Caton, filed March 15, 1995 (GTE March 15, 1995 Ex Parte Filing); letter from F. Gordon Maxson (for Edwin Shimizu) to William F. Caton, filed April 3, 1995 (GTE April 3, 1995 Ex Parte Filing); letter and attachments from Edwin Shimizu to William F. Caton, filed April 14, 1995 (GTE April 14, 1995 Ex Parte Filing); letter and attachments from F. Gordon Maxson to William F. Caton, filed May 10, 1995 (GTE May 10, 1995 Ex Parte Filing); letter and attachment from F. Gordon Maxson to William F. Caton, filed May 12, 1995 (GTE May 12, 1995 Ex Parte Filing); letter and attachments from F. Gordon Maxson to William F. Caton, filed May 30, 1995 (GTE May 30, 1995 Ex Parte Filing); letter and attachment from F. Gordon Maxson to William F. Caton, filed June 2, 1995 (GTE June 2, 1995 Ex Parte Filing); letter and attachment from F. Gordon Maxson to William F. Caton, filed June 7, 1995 (GTE June 7, 1995 Ex Parte Filing); letter from F. Gordon Maxson to William F. Caton, filed June 13, 1995 (GTE June 13, 1995 Ex Parte Filing); letter from F. Gordon Maxson to William F. Caton, filed June 19, 1995 (GTE June 19, 1995 Ex Parte Filing); letter from F. Gordon Maxson to William F. Caton, filed June 23, 1995 (GTE June 23, 1995 Ex Parte Filing). Collectively, these documents represent the GTE ONA Plan and are referred to as the "ONA Plan."

<sup>6</sup> GTE ONA Order, 9 FCC Rcd at 4923, para. 1.

had become effective.<sup>7</sup> In the GTE Plan Order, we approved GTE's ONA Plan in substantial part, but identified two areas to be amended.<sup>8</sup>

5. GTE was required to amend its Cost Allocation Manual (CAM) by June 30, 1995, to state that GTE and its affiliates would take tariffed services at tariffed rates. GTE complied with that requirement.<sup>9</sup> In addition, the Bureau concluded that GTE had not demonstrated that it would file federal tariffs for all of the ONA services for which the Commission requires state and federal tariffs. The GTE ONA Order required GTE to develop a plan to unbundle services useful to ESPs and to tariff those services in both the state and federal jurisdictions. Under the Commission's ONA requirements, all BSAs and BSEs that are technically compatible with interstate access arrangements must be offered under federal tariff, absent a waiver.<sup>10</sup> In the GTE Plan Order, we required GTE to file a petition for waiver of the federal tariffing requirement for those three BSEs and the BSA by July 7, 1995.

6. GTE submitted its waiver request on July 7, 1995 and we subsequently placed it on public notice.<sup>11</sup>

### III. GTE PETITION

7. GTE requests a waiver of the requirement that it file

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<sup>7</sup> GTE Waiver Order, DA 95-718, at para 1. On March 2, 1995, GTE requested a waiver of its obligation to file federal and state ONA tariffs by April 4, 1995. GTE stated that it is already offering, on an unbundled basis, the majority of the services described in its ONA Plan. GTE March 6, 1995 Ex Parte Filing. In its State and Federal Tariff Waiver Petitions, filed on March 2, 1995, GTE asked the Commission (1) to defer the deadline for filing its federal ONA tariff deadline until 30 days after the effective date of the 1995 Annual Access filings, and (2) to extend the due date for filing the state ONA tariffs until 30 days after the effective date of the federal ONA tariff. GTE also requested an extension until March 30, 1996, to file its semi-annual tariff report. On April 3, 1995, the Common Carrier Bureau granted all three requests, subject to the condition that GTE file illustrative tariffs by April 30, 1995. GTE complied with that condition on April 14, 1995.

<sup>8</sup> GTE ONA Plan Order, DA 95-1468, at para. 2.

<sup>9</sup> GTE Cost Allocation Manual Revision, filed June 30, 1995.

<sup>10</sup> BOC ONA Recon. Order, 5 FCC Rcd at 3088, para. 36.

<sup>11</sup> Public Notice, DA 95-1609, released July 19, 1995.

state and federal ONA tariffs for three BSE services, DID, BNS, and CLDCS.<sup>12</sup> GTE proposes instead to state in its interstate access tariffs that these services are available on an intrastate basis rather than filing ONA federal tariffs. DID service allows a caller to dial from the exchange and toll network directly to the stations associated with switching equipment located at the customer's premises. BNS allows a subscriber to block the third number billing, collect billing, or both to the subscriber's telephone account. CLDCS provides a digital common line connection between the end user's premise and the local service wire center. This service enables a customer to aggregate its customer's services onto a digital local loop.

8. GTE states that these three services are optional features that may be available in connection with interstate switched access and special access service offerings and are currently provided pursuant to GTE's state, local, and general exchange service tariffs. GTE claims that this approach is consistent with the interstate access tariffs of Southwestern Bell and US West. GTE argues that it had not intended to include these BSEs in the federal tariffs because they are not associated with feature groups or dedicated network access links (DNALs) "offered or employed in conjunction with interstate or intrastate access serving arrangements."<sup>13</sup>

9. GTE also requests a waiver in order to remove the BSA for ASTS from its ONA Plan, and thus not tariff the service, because the underlying technology supporting that BSA is becoming obsolete.<sup>14</sup> Where available, ASTS is contained in GTE's local private line tariffs. ASTS uses metallic direct current (DC) paths to connect users to their service providers. GTE claims that ASTS is obsolete because outside plant facilities are moving to technologies such as optical fiber, digital carrier, and coaxial cable, not DC paths. GTE proposes to grandfather the service and limit it to current customers with the understanding that the facilities may be discontinued. GTE claims that there are few, if any, requests for ASTA service. Therefore, GTE argues that it should be allowed to remove ASTS from its ONA plan, and that it should not have to file state or federal tariffs for the service.<sup>15</sup>

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<sup>12</sup> GTE Waiver Petition at 1.

<sup>13</sup> GTE ex parte letter from F. Gordon Maxson, GTE to William F. Caton, Acting Secretary, FCC, dated August 10, 1995.

<sup>14</sup> GTE Waiver Petition at 5.

<sup>15</sup> Id. at 4.

#### IV. DISCUSSION

10. We find that GTE has failed to demonstrate good cause for its request for a waiver of the ONA tariffing requirements for the four ONA services, and we, therefore, deny the request. In the ONA Service Withdrawal Order, the Bureau concluded that the BOCs face a high hurdle to convince us that services in their ONA plans that formerly were technically feasible and listed in the plans are no longer feasible.<sup>16</sup> That order also concluded that ONA services must be offered in both state and federal tariffs and that the lack of demand has not been a justification for removing the federal tariffing requirement for ONA services.<sup>17</sup>

11. GTE's waiver request fails to establish good cause for waiving the requirements that it revise its interstate tariff to offer the three BSEs.<sup>18</sup> We conclude that GTE's proposed reference of these services as options does not comply with the ONA requirements to file ONA tariffs. GTE's assertion that these services should be treated as options in access tariffs as available features, but not tariffed as ONA services, is not consistent with the requirements of the GTE ONA Order, or previous decisions regarding state and federal tariffing of ONA services by the BOCs as applied to GTE in the GTE ONA Order.<sup>19</sup> Moreover, GTE did not provide a basis for waiving those tariffing requirements. In particular, GTE did not attempt to substantiate that these services are technically incompatible with interstate access arrangements. In the Second ONA Service Withdrawal Order, for example, the Bureau denied waivers requested by several of the BOCs regarding the tariffing of DID service, one of the services for which GTE seeks a waiver. In that order, we concluded that the

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<sup>16</sup> Amendment of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture; Filing and Review of Open Network Architecture Plans, 7 FCC Rcd 811, para. 2 (Com. Car. Bur. 1992) (ONA Service Withdrawal Order); 7 FCC Rcd 7241 (Com. Car. Bur. 1992) (Second ONA Service Withdrawal Order).

<sup>17</sup> ONA Service Withdrawal Order, 7 FCC Rcd at 811, para. 2; Second ONA Service Withdrawal Order, 7 FCC Rcd at 7244, para. 21.

<sup>18</sup> The Commission may waive any provision of its rules or orders if good cause is shown. 47 C.F.R. § 1.3. A showing of good cause requires the petitioner to demonstrate special circumstances that warrant deviation from the rules or orders and to show how such deviation would serve the public interest. Northeast Cellular Telephone Co. v FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>19</sup> GTE ONA Order at 4937, para. 64.

BOCs must federally tariff the service unless they could show an inability to provide the service because of technical limitations.<sup>20</sup> GTE failed to make that showing in this instance and, accordingly, its waiver request must be denied.

12. GTE also requests a waiver to withdraw, and not tariff, Type I Dedicated Alert Transport BSA from its ONA plan. This service uses metallic direct current (DC) paths to connect users to their alarm service providers. GTE asserts that ASTS will be available only to existing customers. GTE asserts that outside plant facilities to provide ASTS are becoming obsolete and unavailable as it installs new technology, including fiber optic technology, digital loop carrier, microwave, and coaxial cable facilities from GTE's central office to end users. GTE's claim regarding evolving technology does not justify removing an existing service from the ONA plan. GTE included this service as one of the ONA services it proposed in its ONA plan after considering the ONA criteria for selecting ONA services.<sup>21</sup> We conclude that GTE has not justified a waiver to remove the service from its ONA plan and thus must file state and federal ONA tariffs for it.<sup>22</sup> Because, however, no party opposed GTE's proposal to grandfather existing customers, and GTE indicates there are few requests for the service, GTE may include grandfathering provisions in its tariff unless parties raise persuasive arguments in opposition in the tariffing process. If GTE proposes to discontinue providing the service to customers, GTE may, at that time, petition to have the service removed from the ONA plan.

## V. CONCLUSION

13. We deny GTE's petition for a waiver of the ONA tariffing requirements for four ONA services referenced in its waiver petition. GTE must file state and federal tariffs for those services pursuant to the requirements of the GTE ONA Plan Order and the GTE Waiver Order.

## VI. ORDERING CLAUSES

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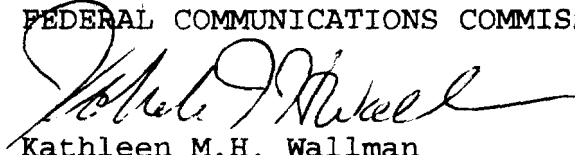
<sup>20</sup> Second ONA Service Withdrawal Order, 7 FCC Rcd at 7241, para. 2-4.

<sup>21</sup> The criteria for selecting ONA services include: market demand for the services, their utility as perceived by enhanced service competitors, and technical and costing feasibility. Phase I Order, 104 FCC 2d at 1065-66.

<sup>22</sup> In the ONA Service Withdrawal Order, we similarly declined to allow Ameritech to remove an alarm service from its ONA plan. ONA Service Withdrawal Order, 7 FCC Rcd at 812, para. 7.

14. IT IS HEREBY ORDERED, that pursuant to Sections 1, 4(i), and (j), 201, 202, 203, 205, and 218, of the Communications Act of 1934, as amended 47 U.S.C. §§ 151, 154(i), 154(j), 202, 203, 205, and 218, GTE's Waiver Request IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'Kathleen M.H. Wallman', written over the printed name.

Kathleen M.H. Wallman  
Chief, Common Carrier Bureau